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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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SILVIA MONICA AYALA-SALAMAT,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. 16-CV-04838-LHK

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 18, 21

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Plaintiff Silvia Monica Ayala-Salamat ("Plaintiff") appeals a final decision of the Commissioner of Social Security ("Defendant") denying Plaintiff's application for a period of disability and disability insurance benefits under Title II of the Social Security Act. Before the Court are Plaintiff's motion for summary judgment, ("Pl. MSJ") ECF No. 18, and Defendant's cross-motion for summary judgment, ("Def. MSJ") ECF No. 21. Having considered the parties' briefs and the record in the case, the Court DENIES Plaintiff's motion for summary judgment and GRANTS Defendant's cross-motion for summary judgment.

I. BACKGROUND

A. Factual Background

1 Plaintiff was born on September 9, 1964. Administrative Record (“AR”) at 53. Plaintiff is
2 a high school graduate. *Id.* Plaintiff worked as an operations manager for a commercial real estate
3 company from March 2001 until May 2011. AR 224. On May 2, 2011, at age 46, Plaintiff was
4 struck in the head by a 6-foot fence pole while at work. AR 833. In her application for disability
5 benefits, Plaintiff alleged that she became disabled on May 2, 2011 due to the following: memory
6 problems, dizziness and blurred vision, depression, severe chronic fatigue, speech problems,
7 inability to handle her own mail and money, intermittent nausea, inability to focus on tasks,
8 medication side effects, and brain injury. AR at 93–94. Plaintiff has acquired sufficient quarters of
9 coverage to remain insured through June 30, 2017. AR at 19. Additional facts are discussed as
10 necessary in the analysis.

11 **B. Procedural History**

12 On March 31, 2013, Plaintiff applied for a period of disability and disability insurance
13 benefits and alleged that she had become disabled on May 2, 2011. AR 191. Plaintiff’s application
14 was denied initially and upon reconsideration. AR 136–40, 142–48. An Administrative Law Judge
15 (“ALJ”) conducted a hearing on December 17, 2014. AR 48–92. At the hearing, Plaintiff
16 appeared with a non-attorney representative and testified about her physical and mental health as
17 they relate to her ability to work. AR 48–92. Vocational Expert (“VE”) Joy Yoshioka and
18 Psychological Expert (“PE”) Alfred Jonas also appeared and testified at the hearing. *Id.*

19 On April 15, 2015, the ALJ issued a written decision denying Plaintiff’s request for Social
20 Security disability insurance benefits. AR 16–47. In making her decision, the ALJ stated that she
21 considered the entire record. AR 24. The ALJ applied the five-step evaluation process for
22 determining disability described in 20 C.F.R. § 404.1520(a). After applying the five-step
23 evaluation process, the ALJ concluded that Plaintiff was not disabled and denied her request for
24 SSDI. AR 42.

25 Plaintiff appealed the ALJ’s decision to the Social Security Administration’s Appeals
26 Council. AR 14–15. The Appeals Council denied Plaintiff’s request for review. AR 1–6. Thus, the
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1 ALJ's decision became the final decision of the Commissioner on July 22, 2016. AR 5.

2 On August 23, 2016, Plaintiff filed her complaint in this Court. ECF No. 1. On January 26,
3 2017, Plaintiff filed her motion for summary judgment. ECF No. 18. On March 23, 2017,
4 Defendant filed its cross motion for summary judgment and opposition to Plaintiff's motion for
5 summary judgment. ECF No. 21. On April 19, 2017, Plaintiff filed her reply. ECF No. 22.

6 **II. LEGAL STANDARD**

7 **A. Standard of Review**

8 This Court has the authority to review the Commissioner's decision to deny benefits. 42
9 U.S.C. § 405(g). The Court will disturb the Commissioner's decision "only if it is not supported
10 by substantial evidence or is based on legal error." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169
11 F.3d 595, 599 (9th Cir. 1999). In this context, "substantial evidence" means "more than a mere
12 scintilla but less than a preponderance—it is such relevant evidence that a reasonable mind might
13 accept as adequate to support the conclusion." *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir.
14 1995) (per curiam); *see also Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). When
15 determining whether substantial evidence exists to support the Commissioner's decision, the Court
16 examines the administrative record as a whole, considering adverse as well as supporting
17 evidence. *Drouin*, 966 F.2d at 1257; *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989).
18 Where evidence exists to support more than one rational interpretation, the Court must defer to the
19 decision of the Commissioner. *Moncada*, 60 F.3d at 523; *Drouin*, 966 F.2d at 1258.

20 **B. Standard for Determining Disability**

21 The Social Security Act defines disability as the "inability to engage in any substantial
22 gainful activity by reason of any medically determinable physical or mental impairment which can
23 be expected to result in death or which has lasted or can be expected to last for a continuous period
24 of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The impairment must also be so severe
25 that a claimant is unable to do her previous work and cannot "engage in any other kind of
26 substantial gainful work which exists in the national economy," given her age, education and work

1 experience. 42 U.S.C. § 423(d)(2)(A).

2 “ALJs are to apply a five-step sequential review process in determining whether a claimant
3 qualifies as disabled.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009).
4 At step one, the ALJ determines whether the claimant is performing “substantial gainful activity.”
5 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled. If not, the analysis proceeds to
6 step two. At step two, the ALJ determines whether the claimant suffers from a severe impairment
7 or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not
8 disabled. If so, the analysis proceeds to step three. At step three, the ALJ determines whether the
9 claimant’s impairment or combination of impairments meets or equals an impairment contained in
10 20 C.F.R. Part 404, Subpart P, Appendix 1 (“Listings”). 20 C.F.R. § 404.1520(a)(4)(iii). If so, the
11 claimant is disabled. If not, the analysis proceeds to step four. At step four, the ALJ determines
12 whether the claimant has the residual functioning capacity to perform his or her past relevant
13 work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled. If not, the analysis
14 proceeds to step five. At step five, the ALJ determines whether the claimant can perform other
15 jobs in the national economy. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is not disabled.
16 If not, the claimant is disabled.

17 “The burden of proof is on the claimant at steps one through four, but shifts to the
18 Commissioner at step five.” *Bray*, 554 F.3d at 1222. “The Commissioner can meet this burden
19 through the testimony of a vocational expert or by reference to the Medical Vocational Guidelines
20 at 20 C.F.R. pt. 404, subpt. P, app. 2.” *Thomas v. Barnhart*, 278 F.3d 947, 955 (9th Cir. 2002).

21 **III. DISCUSSION**

22 Plaintiff does not contest the ALJ’s decision in steps one, two, and three. At step four,
23 Plaintiff claims that the ALJ gave inadequate reasons for discounting or partly discounting certain
24 opinions in the record. At step five, Plaintiff claims that the ALJ improperly relied solely on the
25 grids rather than relying on the testimony of a Vocational Expert.

26 The Court first summarizes the relevant medical evidence and then addresses Plaintiff’s
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1 arguments in turn.

2 **A. Relevant Medical Evidence**

3 “There are three types of medical opinions in social security cases: those from treating
4 physicians, examining physicians, and non-examining physicians.” *Valentine v. Comm’r of Soc.*
5 *Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). “As a general rule, more weight should be given
6 to the opinion of a treating source than to the opinion of doctors who do not treat the claimant.”
7 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “The opinion of an examining physician is, in
8 turn, entitled to greater weight than the opinion of a nonexamining physician.” *Id.*

9 Accordingly, when evaluating medical evidence, an ALJ must give a treating physician’s
10 opinion “substantial weight.” *Bray*, 554 F.3d at 1228. “When evidence in the record contradicts
11 the opinion of a treating physician, the ALJ must present ‘specific and legitimate reasons’ for
12 discounting the treating physician’s opinion, supported by substantial evidence.” *Id.* (quoting
13 *Lester*, 81 F.3d at 830). “The ALJ must do more than offer his conclusions. He must set forth his
14 own interpretations and explain why they, rather than the doctors, are correct.” *Orn v. Astrue*, 495
15 F.3d 625, 631 (9th Cir. 2007) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
16 “However, ‘the ALJ need not accept the opinion of any physician, including a treating physician,
17 if that opinion is brief, conclusory and inadequately supported by clinical findings.’” *Id.* (quoting
18 *Thomas*, 278 F.3d at 957).

19 The record evidence regarding Plaintiff’s condition is summarized below:

20 **1. Treatment from May 2011 to September 2012**

21 Soon after her May 2, 2011 accident, Plaintiff was diagnosed with a minor head injury, a
22 concussion, and a single contusion of the scalp and was prescribed Antivert. Ex. 10F. However a
23 CT scan was negative for relevant abnormalities. A consultation with a specialist showed some
24 head tenderness and a diagnosis of post-concussive syndrome and cervical strain. Ex. 1F at 377.
25 The specialist did not indicate whether the cervical strain was caused by the May 2, 2011 accident.
26 The specialist approved Plaintiff to return to work as of May 10, 2011 with limitations that

1 Plaintiff should not perform safety sensitive work and should be allowed a break every two hours.
2 *Id.* In follow-up appointments in the next month, Plaintiff demonstrated some tingling and spasms
3 but relatively little pain or neck soreness, as well as the ability to ambulate with less loss of
4 balance and the ability to tolerate outings for 3-4 hours. Ex. 2F at 385-86, Ex. 3F at 394.

5 Plaintiff then saw Wei Wang, M.D. between May 2011 and October 2011. Plaintiff
6 complained of neck pain, headaches, dizziness, nausea, fatigue, photosensitivity, insomnia, and
7 memory and concentration problems following her May 2, 2011 injury. Ex. 7F at 609. Dr. Wang
8 stated that Plaintiff had “headaches secondary to cervicogenic causes and/or sequela of
9 postconcussive syndrome”; “neck pain with sporadic left upper extremity parasthesias concerning
10 for cervical radiculopathy/radiculitis” “word finding difficulty, memory deficits, dizziness,
11 anhedonia, intermittent nausea/vomiting, fatigue, mood disturbance, and sleep disturbance
12 concerning for postconcussive syndrome from closed-head mild to moderate traumatic brain
13 injury”; “vitreous humor collapse of the right eye”; and “possible depression.” *Id.* at 611. Dr.
14 Wang prescribed Nortriptyline, Treximet, and Toopmax for headaches. *Id.* at 622, 709. Dr. Wang
15 also noted on several occasions that, “There is no impairment of insight or judgment. Memory
16 intact. Patient has normal mood and affect.” Ex. 7F at 689, 705, 709, 712. Plaintiff also underwent
17 physical therapy between May 2011 and September 2011, during which she experienced some
18 improvement. Exs. 2F, 3F.

19 On Mar 23, 2011, Dr. Wang stated that Plaintiff could return to work the next day
20 performing sedentary work for four hours per day. Ex. 7F at 643-44. On July 19, 2011, Dr. Wang
21 stated that Plaintiff could return to work for five hours, and later perhaps six, “if she is able to
22 tolerate the work load and hours.” *Id.* at 674. On August 8, 2011, Dr. Wang recommended
23 Plaintiff decrease her working hours to four hours per day. *Id.* at 679. On September 12, 2011, Dr.
24 Wang stated that Plaintiff would likely be unable to return to work for approximately two months.
25 *Id.* at 649. However, in response to the question “[i]s employee able to perform work of any kind,”
26 Dr. Wang indicated “Yes.” *Id.*

1 Between October 2011 and August 2012, Plaintiff was treated at Alliance Occupational
2 Medicine. Plaintiff was treated with medications, as well as acupuncture and physical therapy, and
3 was also given work restrictions. Ex. 4F, 5F, 6F. For example, in October 2011, Plaintiff was
4 diagnosed with a contusion of the head, sprain/strain of the cervical spine, and sprain/strain of the
5 upper back. Ex. 4F. The doctor also noted that Plaintiff was alert and oriented, that her speech and
6 affect were within normal limits, and that Plaintiff's gait was normal. *Id.* at 411. The doctor
7 recommended continuing on medication and undergoing physical rehabilitation, and the doctor
8 noted, "No Permanent Disability Expected." *Id.* at 412.

9 In January 2012, Plaintiff was treated by Dr. Petros. Plaintiff exhibited some symptoms of
10 post-concussive syndrome and continued being prescribed Treximet for headaches. Ex. 5F at 436.
11 Dr. Petros also recommended that Plaintiff not drive at work and that Plaintiff be limited to lifting,
12 pulling, or pushing under 25 pounds. *Id.* However, Dr. Petros concluded that Plaintiff could work
13 six hours per day with these limitations. *Id.* at 541. Plaintiff also received 20 sessions of speech
14 therapy before September 2012. Ex. 16F at 949.

15 In March 2012, Plaintiff complained of a fall due to dizziness and was referred to
16 vestibular therapy. Ex. 6F. There is some evidence that Plaintiff attended neuromuscular and gait
17 training in 2012, but there is no evidence that Plaintiff attended vestibular therapy after 2012. In
18 March 2012, Plaintiff was also prescribed Nortriptyline for mood disorder and central pain
19 symptoms, and her doctor sought authorization for additional speech language therapy, which
20 Plaintiff received. Ex. 6F.

21 In July and August 2012, Plaintiff was treated for flared left-sided clinical cervical
22 radiculitis with Medrol Dosepak, acupuncture, Vicodin, Flexeril, and an H-Wave Homecare
23 System. Ex. 6F at 557–58, 566. Plaintiff reported an increase in overall functioning ability in
24 August 2012. *Id.* at 543.

2. MRI, EEG, and EMG Evaluations

26 Plaintiff received an MRI on May 19, 2011, which was read as “[d]iffuse degenerative disc

1 disease, with broad-based bulge @C6–7, mild to moderate facet degenerative changes without
2 significant neural foraminal stenosis. The central canal is normal throughout.” Ex. 4F at 411.
3 Plaintiff received a second MRI of her head on May 19, 2011, which was read as “[u]nremarkable
4 MRI appearance of brain, Empty Sella syndrome, a normal variant, and mild chronic paranasal
5 sinusitis.” *Id.* In short, the spine MRI showed cervical degenerative disease and disc bulge, but the
6 brain MRI was normal. Ex. 16F at 948.

7 On March 25, 2013, Plaintiff underwent an MRI of the cervical spine that showed “some
8 straightening of the cervical lordosis that may indicate underlying muscle spasms.” Ex. 16F at
9 922. The findings also indicated disc disease and/or degenerative changes, which were compatible
10 with annular tears in the C3–C4 and C6–C7 levels. *Id.* However, there were no intrinsic
11 abnormalities in the spinal cord or the foramen magnum. There was also no large herniation or
12 transligamentous disc extrusion, no significant lateral recess or foraminal encroachment, and no
13 central canal narrowing. *Id.*

14 On May 29, 2013, Plaintiff received an electroencephalogram (EEG) which showed
15 normal findings in wakefulness and sleep. Ex. 15F at 893. During the photic stimulation portion of
16 the EEG, Plaintiff reported “feeling electric shocks all over [her] body . . .” *Id.*

17 On May 29, 2013, Plaintiff also underwent an electromyogram (EMG) and nerve
18 conduction study. The findings of this study were consistent with left cervical radiculitis. ECF No.
19 16F at 914. However, the study found that “[t]here is no electrodiagnostic evidence of peripheral
20 entrapment neuropathy of the left median or ulnar nerve at the wrist or the elbow.” *Id.*

21 **3. Thynn Lynn, M.D. (Treating Neurologist)**

22 Plaintiff saw Thynn Lynn, M.D. from September 2012 through 2014. Plaintiff consistently
23 complained of headaches, pain, fatigue, dizziness, balance problems, occasional falls, blurry
24 vision, sleep problems, depression, and difficulties with memory, cognition, and concentration.
25 *See, e.g.*, Ex. 16F at 906, 908. Throughout this period, Dr. Lynn treated Plaintiff with cervical
26 traction, occipital nerve block and trigger point injections, and medications. *Id.* Dr. Lynn also
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1 recommended various forms of therapy, including psychotherapy. *Id.* at 908.

2 In September 2012, Dr. Lynn diagnosed Plaintiff with status-post traumatic head injury
3 with concussion and scalp contusion; post-traumatic headaches with contribution by cervicogenic
4 headaches and occipital neuralgia pain; cervical sprain and left cervical radiculopathy; post-
5 concussive syndrome with cognitive impairment; speech difficulty and mood disorder; post-
6 traumatic dizziness/vertigo with cognitive impairment; speech difficulty and mood disorder; post-
7 traumatic dizziness/vertigo and possible traumatic vestibular dysfunction; visual disturbance with
8 light hypersensitivity; floaters and pain of the eyes; and anxiety and depression secondary to head
9 injury and chronic pain syndrome. Ex. 16F at 960. Dr. Lynn recommended speech and cognitive
10 therapy; physical therapy; trigger point injections and/or occipital nerve block injections;
11 medications for mental symptoms; and a formal evaluation for vestibular problems. *Id.* at 961.

12 In October 2012, Dr. Lynn prescribed Cymbalta for depression and anxiety, and in
13 November 2012, Dr. Lynn administered occipital nerve block injections and trigger point
14 injections and prescribed Motrin and Vicodin, to which Plaintiff responded well. *See, e.g., id.* at
15 933–34. Plaintiff again underwent occipital nerve block injections and trigger point injections in
16 February 2013 after complaining of severe headaches. *Id.* at 925. In May 2013, Plaintiff was
17 continued on medications with an increased dose of Flexeril, and in June 2013, Dr. Lynn
18 recommended eight psychotherapy sessions for Plaintiff. *Id.* at 912, 915.

19 In August 2013, Dr. Lynn treated Plaintiff with Saunder's cervical traction and advised
20 Plaintiff to exercise at home. *Id.* at 906. In December 2013, Plaintiff appeared distressed and
21 tearful, and Dr. Lynn again administered occipital nerve block injections and trigger point
22 injections, after which Plaintiff reported instant relief. Ex. 29F at 1175–76. Dr. Lynn advised
23 Plaintiff to continue home exercise and to take Motrin and Vicodin for pain. *Id.* In June 2014,
24 Plaintiff flew to Utah for a wedding and took Xanax to help with anxiety and panic attacks
25 associated with flying. *Id.* at 1159.

26 In September 2014, Plaintiff recommended chiropractic sessions, continued speech and
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1 cognitive therapy, continued psychological counseling and psychotherapy, medication, home
2 exercises, and using computer brain training games such as Lumosity. *Id.* at 1156–57.

3 During the time that Dr. Lynn was Plaintiff's treating physician, Plaintiff was also
4 examined by Dr. Scott Feldman, an optometrist, on August 14, 2012. Ex. 13F. In a June 4, 2013
5 report describing the earlier examination, Dr. Feldman found that Plaintiff had 20/20 vision in
6 both eyes. *Id.* at 871. Dr. Feldman noted no pathological findings, full visual fields in each eye,
7 and no reason to believe that Plaintiff had any significant visual defect that “causes her problems
8 of consequence and certainly not a disability.” *Id.* Although Plaintiff had vitreous collapse, Dr.
9 Feldman emphasized that this is “a very normal occurrence in someone her age.” *Id.*

10 **4. Robert Larsen, M.D.**

11 Robert Larsen, M.D., conducted a psychiatric evaluation of Plaintiff on May 17, 2012 in
12 Plaintiff's worker's compensation case. Ex. 19F. During the evaluation, Plaintiff was dysphoric,
13 became teary-eyed at times, and had some problems recalling pertinent information. However,
14 Plaintiff was also neatly attired, alert, and oriented. Additionally, Plaintiff's speech was clear and
15 well-metered, her behavior was cooperative, and her intelligence was “grossly within normal
16 limits.” Ex. 19F at 1023–24.

17 As part of the evaluation, Dr. Larsen reviewed the records of Dr. Eric Morgenthaler, who
18 administered the following psychological tests to Plaintiff: Shipley-2, the MMPI-2 personality
19 inventory, the Symptom Checklist-90-Revised, the Beck Depression Inventory, and the Rotter
20 Incomplete Sentences. Ex. 19F at 1025. Plaintiff scored an IQ score of 66 on the Shipley-2 test,
21 falling within the extremely low range of adult intelligence. However, Dr. Morgenthaler stated that
22 the Shipley-2 test likely underestimated Plaintiff's intelligence. The MMPI-2 test also suggested
23 possible symptom exaggeration. Dr. Morgenthaler also found that Plaintiff's “differential
24 diagnosis should include somatoform, depressive and anxiety disorders in an individual who may
25 be exaggerating the extent of her difficulties.” Ex. 19F at 1026.

26 Based on his review of these records, Dr. Larsen diagnosed Plaintiff with a cognitive
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1 disorder not otherwise specified secondary to a closed head injury. According to Dr. Larsen,
2 Plaintiff “essentially has a post-concussion syndrome that involves persistent headache,
3 photophobia, problems with balance, memory dysfunction and emotional lability. The applicant’s
4 short-term memory problems affect her capacity to multi-task and learn new information.” *Id.* at
5 1029. Despite the test findings, Dr. Larsen also stated that “[t]here is no good reason to believe
6 that [Plaintiff] is misrepresenting her true experience.” *Id.* Dr. Larsen assigned Plaintiff a global
7 assessment of functioning (“GAF”) score of 50, which indicates “serious cognitive and emotional
8 symptoms.” *Id.* at 1030.

9 GAF scores are used by mental health professionals and are meant to subjectively assess
10 the social, occupational, and psychological functioning of a person. AMERICAN PSYCHIATRIC
11 ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV-TR 34
12 (2000). GAF scores range between 0 and 100. A score of 91–100 reflects “superior functioning in
13 a wide range of activities.” *Id.* A score of 81–90 reflects “good functioning in all areas.” *Id.* A
14 score of 71–80 reflects “no more than slight impairment in social, occupational, or school
15 functioning.” *Id.* A score of 61–70 reflects “some difficulty in social, occupational, or school
16 functioning.” *Id.* A score of 51–60 reflects “moderate difficulty in social, occupational, or school
17 functioning.” *Id.* A score of 41–50 reflects “serious impairment in social, occupational, or school
18 functioning.” *Id.* A score of 31–40 reflects “major impairment in several areas.” A score of 21–30
19 reflects “inability to function in almost all areas.” A score of 11–20 reflects “some danger of
20 hurting self or others.” *Id.* A score of 1–10 reflects a “persistent danger of severely hurting self or
21 others.” *Id.* Finally, a score of 0 reflects inadequate information. *Id.*

22 Dr. Larsen also conducted a psychiatric re-evaluation of Plaintiff on December 30, 2013.
23 Plaintiff was dysphoric and intermittently tearful, and her speech was halting or stuttering
24 throughout the meeting. Otherwise the results were unremarkable. Plaintiff was neatly attired,
25 oriented, cooperative, and polite. As part of the evaluation, Dr. Larsen administered the following
26 tests: Millon Clinical Multiaxial Inventory-III, a Symptom-Checklist-90-Revised, the Beck
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1 Depression Inventory, and the Beck Anxiety Inventory. *Id.* at 1003–04. This testing showed
2 significant elevations on anxiety disorder, somatoform disorder, major depression, dysthymic
3 disorder, and post-traumatic stress. *Id.* at 1003. Dr. Larsen noted that the testing indicated some
4 symptom exaggeration, but Dr. Larsen concluded that “that is probably the result of her reporting
5 how bleak she feels about her existence and prospects for the future.” *Id.* at 1007. Dr. Larsen
6 stated that “[t]his woman is not faking.” *Id.* Dr. Larsen found that his earlier GAF score of 50
7 “underestimate[d] . . . how symptomatic and disabled she is.” *Id.* Dr. Larsen assigned a GAF score
8 of 40, which reflects “major impairment in several areas” and concluded that Plaintiff was
9 permanently and totally disabled. *Id.* at 1008.

10 **5. Claude Munday, Ph.D.**

11 Claude Munday, Ph.D, evaluated Plaintiff on July 12, 2012 in Plaintiff’s worker’s
12 compensation case. Plaintiff reported symptoms including memory problems, mental lapses,
13 word-finding difficulty, difficulty with household tasks, lack of energy, headaches, and
14 depression. Ex. 22F at 1066–72. Dr. Munday administered several tests, most of which showed no
15 obvious problems with mental flexibility or multi-tasking. *Id.* at 1072. One test, the Wechsler
16 Adult Intelligence Scale IV test, yielded a full scale IQ of 78. *Id.* at 1073–74. On the basis of these
17 tests, Dr. Munday diagnosed Plaintiff with post-concussion syndrome with mild cognitive
18 residuals and assigned Plaintiff a “14% whole person impairment.” *Id.* at 1078. Dr. Munday
19 opined that Plaintiff could not return to her past work and stated that Plaintiff had the best chance
20 of employment in a job where task demands remained static, where there was little public contact,
21 and where Plaintiff “could work somewhat at her own pace.” Ex. 23F at 1082.

22 **6. Robert Perez, Ph.D.**

23 Robert Perez, Ph.D. evaluated Plaintiff on November 26, 2012 in Plaintiff’s worker’s
24 compensation case. Ex. 11F. As in other valuations, Dr. Perez discussed symptoms such as
25 headaches, neck and left shoulder pain, vestibular difficulties, cognitive impairment, and severe
26 depression and anxiety. *Id.* at 850–53. Plaintiff was neatly attired, participated in the interview and

1 questionnaires without breaks, and was “mildly labile.” *Id.* at 856. Plaintiff also had a logical
2 thought process and her judgment and insight were unremarkable. *Id.* at 858–60. Plaintiff stood
3 without difficulty and walked with a normal gait. *Id.* Plaintiff had no physical difficulties or signs
4 of pain and sat comfortably without requesting breaks. *Id.* Plaintiff also worked on psychometric
5 questionnaires for two hours without a break, then after a break, Plaintiff continued to work for
6 another two hours. *Id.*

7 Dr. Perez “did not perform formal neurocognitive testing.” AR 857. Instead, Dr. Perez
8 stated that “[d]iscussion of cognitive status is deferred to Dr. Claude Munday.” *Id.* On the basis of
9 his own and other evaluations, Dr. Perez diagnosed Plaintiff with a cognitive disorder not
10 otherwise specified, adjustment disorder with significant disturbance of emotion and mood, status
11 post mild to moderate closed head injury, cervical spinal injury, sleep apnea, and severe stress. *Id.*
12 Dr. Perez also provisionally diagnosed Plaintiff with a pain disorder with physical and
13 psychological elements. *Id.* Dr. Perez assigned Plaintiff a GAF score of 50. *Id.*

14 **7. Janine Marinos, Ph.D.**

15 Janine Marinos, Ph.D. conducted a psychiatric consultative examination on January 16,
16 2014. Ex. 20F. Plaintiff reported problems with speech, writing, reading, cognition, memory,
17 vestibular abilities, vertigo, photosensitivity, and headaches. Plaintiff also reported decreased
18 depth perception, dizziness, falls, and panicky behavior. *Id.* at 1036–37. Plaintiff stated that her
19 mother manages Plaintiff’s finances. *Id.* Plaintiff’s comprehension was grossly intact, although
20 Plaintiff performed somewhat poorly on attention and concentration testing. *Id.* Plaintiff exhibited
21 linear, goal-directed thinking, fair insight and judgment, and a normal gait and posture. *Id.*
22 Plaintiff was administered a WAIS-IV intelligence test, a WMS-IV memory test, and a Trail
23 making test. *Id.* These tests showed a full-scale IQ of 79 and some impairments in memory. *Id.* at
24 1038–39.

25 Dr. Marinos diagnosed Plaintiff with depressive disorder not otherwise specified and
26 assigned a GAF score of 51–60, which equates to moderate symptoms or moderate difficulty in

1 social, occupational, or school functioning. *Id.* at 1038. Dr. Marinos opined that Plaintiff would
2 have difficulty working in a fast-paced, stressful environment. Nevertheless, Dr. Marinos found
3 that Plaintiff would be capable of managing funds in her own best interests if she were granted
4 benefits. *Id.* at 1039.

5 **8. Maureen Miner, M.D.**

6 Maureen Miner, M.D., evaluated Plaintiff on July 18, 2013 in Plaintiff's worker's
7 compensation case. Ex. 27F. As in other evaluations, Plaintiff complained of headaches, blurry
8 vision, dizziness, balance problems, face numbness, hearing hypersensitivity, stuttering, neck pain
9 with radiation down the left arm, and fatigue. *Id.* at 1138–42. Plaintiff reported difficulty with
10 daily life tasks such as dressing, showering, and cooking, and had word-finding difficulties and
11 memory deficits. *Id.* Among other findings, Dr. Miner concluded that Plaintiff had some
12 diminished sensation in her face, in and around her left ulnar nerve, and on her left arm. *Id.* at
13 1143–44. However, Plaintiff's sensation was intact in all four extremities. *Id.* Plaintiff exhibited
14 4+/5 to 5/5 strength except in her left upper extremity, in which she exhibited 4/5 strength upon
15 wrist extension, wrist flexion, and elbow extension. *Id.* at 1144. Plaintiff had a diminished tandem
16 gait bilaterally, but her gait was upright and symmetrical, and she did not use a cane. *Id.*

17 Dr. Miner diagnosed Plaintiff with "status-post object falling on patient"; traumatic brain
18 injury with posttraumatic headache, visual disturbance, hyperacusis, dysosmia, cognitive/physical
19 fatigue, cognitive deficits, problems with communication, mood disturbance, and disequilibrium;
20 neck pain with cervicogenic headache contribution with left upper extremity radiation,
21 electrodiagnostic evidence of left C7, possible left C6 radiculopathy; and obstructive sleep apnea.
22 *Id.* at 1144–45. Dr. Miner specified that although Plaintiff had often been diagnosed with
23 postconcussive head syndrome, a more accurate diagnosis was traumatic brain injury. *Id.* at 1145.
24 Dr. Miner opined that "depending upon the outcome of [Plaintiff's] comprehensive treatment, . . .
25 [Plaintiff] will likely not be competitively employable in the open labor market." *Id.*

26 **9. Ronald C. Diebel, M.D. (Treating Psychiatrist)**

1 Ronald C. Diebel, M.D., treated Plaintiff from late 2013 through 2014 for post-concussive
2 disorder with depression, anxiety, and cognitive impairment. Ex. 31F. Dr. Diebel treated Plaintiff
3 with medications and recommended cognitive behavioral therapy and cognitive linguistic re-
4 training. Dr. Diebel prescribed Risperidone for Plaintiff and increased the dosage to 2 mg in
5 January 2014, but then decreased the dosage in February 2014 after Plaintiff reported relative
6 stability with the medications. *Id.* at 1185. In February 2014, Dr. Diebel also agreed that Plaintiff
7 could benefit from a home health aide because her mother was traveling to South America. *Id.* at
8 1181. In August 2014, Dr. Diebel discontinued Plaintiff's use of Mirtazapine, prescribed Effexor
9 and continued Risperidone. Ex. 31F. Plaintiff reported a better mood in September 2014. Ex. 31F.

10 Dr. Diebel concluded on a check-box form that Plaintiff could not meet competitive
11 employment standards for even unskilled work. Ex. 30F at 1177. Specifically, Dr. Diebel found
12 that Plaintiff could not meet competitive standards in making simple work-related decisions,
13 maintaining attention for 2 hours at a time, asking simple questions or requesting assistance,
14 taking public transportation, or maintaining socially appropriate behavior. *Id.* However, Dr. Diebel
15 noted that Plaintiff could manage benefits in her own best interest. Ex. 30F, 31F.

10. Alfred G. Jonas, M.D.

17 Alfred G. Jonas, M.D., was the medical expert who testified at the hearing on December
18 17, 2014. At the hearing, Dr. Jonas summarized Plaintiff's reported symptoms and medical
19 history, but stated that “[t]he problem in this record is that there are no objective findings really at
20 all” to support Plaintiff's claimed limitations. AR 59. Dr. Jonas noted some possible abnormalities
21 in MRI findings and EMG findings, but opined that these issues were minor. AR 60–61. However,
22 Dr. Jonas also noted that the record contained evidence of symptom exaggeration. Dr. Jonas also
23 opined that Plaintiff had no meaningful interpersonal impairments. AR 61–62. Dr. Jonas stated
24 that he could not state definitively how Plaintiff would function over a 40-hour workweek, but Dr.
25 Jonas opined that Plaintiff had no restrictions at all based on the objective medical evidence. AR
26 62–67. Dr. Jonas opined that Dr. Diebel's report was internally inconsistent because despite all the

1 impairments that Dr. Diebel diagnosed, Dr. Diebel also found that Plaintiff could handle her own
2 finances independently. AR 68–69. Overall, Dr. Jonas concluded that there were “no reliable
3 indicators in this record of significant brain injury.” AR 69.

4 **11. State Agency Physicians – Mental Assessments**

5 On September 13, 2013, the State agency psychological consultant, Dr. Aquino-Caro,
6 considered the mental impairment Listings criteria (“paragraph B” criteria). AR 103. Dr. Aquino-
7 Caro concluded that Plaintiff has moderate limitations in activities of daily living; mild difficulties
8 in social functioning; moderate difficulties maintaining concentration, persistence or pace; and no
9 episodes of decompensation of extended duration. AR 107–08.

10 Dr. Aquino-Caro also conducted a Mental Residual Function Capacity Assessment
11 (“MRFC”). AR 107. From the MRFC, Dr. Aquino-Caro concluded that Plaintiff was “[a]ble to
12 understand and remember work locations and procedures of a simple, routine nature involving 1–2
13 step job tasks and instructions.” *Id.* Dr. Aquino-Caro also concluded that Plaintiff would
14 “[r]espond appropriately to supervision, co-workers, and social interaction in the workplace (when
15 social interaction is limited to small groups and is infrequent).” AR 108. Finally, Dr. Aquino-Caro
16 concluded that Plaintiff was “[a]ble to travel, avoid workplace hazards, respond to change and set
17 realistic goals independently.” AR 109.

18 On February 4, 2014, another state agency consultant, Dr. Brill, considered the paragraph
19 B criteria. AR 123. Dr. Brill concluded that Plaintiff had mild restrictions in activities of daily
20 living, moderate difficulties in social functioning, moderate difficulties maintaining concentration,
21 persistence, or pace, and no episodes of decompensation of extended duration. *Id.* Like Dr.
22 Aquino-Caro, Dr. Brill also conducted an MRFC and concluded that Plaintiff could perform up to
23 three-step job tasks, could maintain basic concentration and attention, could function with limited
24 social interaction in small groups, and could function in a setting “that does not place a priority on
25 rapid task completion.” AR 128–29.

26 **12. State Agency Physicians – Physical Assessments**

1 On September 12, 2013, E. Wong, M.D., a state agency physician, reported a Physical
2 Functional Capacity Assessment (PRFC). AR 102. Dr. Wong concluded that Plaintiff could lift 20
3 pounds occasionally and 10 pounds frequently; could sit, stand, and/or walk for 6 hours in an 8-
4 hour workday; should avoid forceful pushing or pulling with her left arm; could occasionally
5 stoop, kneel, crouch, crawl, and climb ramps, stairs, ladders, ropes and scaffolds; should never
6 balance; could perform limited overhead reaching; and should avoid concentrated exposure to
7 hazards. AR 105–06.

8 On February 19, 2014, another state agency physician, F. Greene, M.D., reported a PRFC
9 coming to the same conclusions as Dr. Wong's report. AR 125-27.

13. Vocational Consultants

11 On May 29, 2014, Scott Simon, M.S., a certified rehabilitation counselor, examined
12 Plaintiff and reviewed her medical record. Ex. 25F. Mr. Simon concluded that Plaintiff had lost
13 100% of her future earning capacity due to her May 2, 2011 injury. *Id.* at 1089. On September 22,
14 2014, a vocational consultant, Tom Linvill, M.A., C.R.C., also concluded that Plaintiff had lost
15 100% of her future earning capacity due to her May 2, 2011 injury. *Id.* at 1126.

16 B. Non-Medical Evidence

1. Records Regarding Driving Abilities

18 In June 2012, Plaintiff attended a two-part comprehensive driver evaluation. Plaintiff
19 demonstrated basic physical abilities to drive independently at slow speeds. Ex. 8F. However, the
20 rehabilitative driver consultant recommended that Plaintiff not drive by herself because of her
21 fears, physical discomfort, and reduced cognitive and visual abilities. *Id.* at 731. The consultant
22 recommended that Plaintiff take 20 hours of driver training lessons to increase her endurance and
23 confidence while driving. *Id.*

2. Third Party Statements

25 The record reviewed by the ALJ contained statements from third parties who did not
26 testify at the hearing. These statements are from Yolanda Ayala, Plaintiff's mother; Jean Green,

1 Plaintiff's friend; and Raul Ayala, Plaintiff's brother. Each of these three statements largely
2 repeated Plaintiff's self-reported symptoms. Exs. 9E, 20E, 21E. Green and Raul Ayala also stated
3 that Plaintiff had been independent before her May 2, 2011 injury.

4 **C. The ALJ's finding**

5 The ALJ applied the five-step evaluation process for determining disability described in 20
6 C.F.R. § 404.1520(a). At step one, the ALJ found that Plaintiff had not engaged in substantial
7 gainful activity since May 2, 2011, the alleged disability onset date. AR 21. At step two, the ALJ
8 concluded that Plaintiff suffers from the following severe impairments: post-concussive syndrome,
9 cognitive issues, pain disorder/cervical disc displacement, adjustment disorder, and obesity. *Id.*
10 At step three, the ALJ found that Plaintiff's impairments did not meet or medically equal an
11 impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 22–23.

12 Prior to step four, the ALJ found that Plaintiff had the residual functional capacity ("RFC")
13 to perform less than the full range of light work as defined by 20 CFR 404.1567(b) with some
14 limitations. AR 24. In coming to this conclusion, the ALJ emphasized that except for MRI
15 findings showing "relatively minor abnormalities" and an EMG study that "was consistent with
16 some cervical radiculitis," the objective medical evidence regarding Plaintiff was "largely
17 unremarkable." AR 29. The ALJ also found that some of Plaintiff's self-reported limitations,
18 including limitations in social functioning, "are not entirely credible." AR 23. The ALJ also noted
19 that Plaintiff was able to manage her own funds, that Plaintiff was mostly independent in daily
20 living activities, and that Plaintiff frequently traveled outside the home and had even traveled out
21 of state for a wedding. AR 22–23. The ALJ gave little weight to medical opinions concluding that
22 Plaintiff needed a slower-paced environment. *See, e.g.*, AR 32. The ALJ also gave little weight to
23 medical opinions concluding that Plaintiff suffered from serious cognitive impairments to the
24 extent that those opinions were based on Plaintiff's self-reported symptoms rather than on
25 objective medical evidence. *See, e.g.*, AR 33. The ALJ also made other findings regarding the
26 reliability of different medical opinions, which are discussed below.

Based on the evidence and the ALJ's credibility determinations, the ALJ defined Plaintiff's RFC as follows:

[T]he claimant can lift 20 pounds occasionally and 10 pounds frequently. She can stand and walk for 6 hours in an 8-hour workday and sit for 6 hours in an 8-hour workday. Pushing and pulling should be limited to the weight limits given above. The claimant can only occasionally stoop, crouch, kneel, and balance. Furthermore, the claimant can understand and remember work locations and procedures of a simple, routine nature involving 1- to 2- step job tasks and instructions.

AR 24. Accordingly, at step four, the ALJ found that Plaintiff's RFC did not allow her to perform her past relevant work. AR 40. At step five, however, the ALJ found that Plaintiff was not disabled. AR 40–41. Although a vocational expert testified at the hearing, in the written order the ALJ relied on the medical-vocational guideline ("grids") in conducting the step five inquiry. *Id.* Specifically, the ALJ found that Plaintiff could perform substantially all of the demands of unskilled light work and that Plaintiff's nonexertional limitations "have little or no effect on the occupational base of unskilled light work." AR 41. Therefore, a finding of not disabled was directed by Medical-Vocational Rule 202.21 and Rule 202.14. *Id.* The ALJ found that Plaintiff was not disabled and denied disability benefits. *Id.*

D. Analysis

In Plaintiff's motion for summary judgment, Plaintiff does not contest the ALJ's decision in steps one, two, and three. At step four, Plaintiff claims that the ALJ gave inadequate reasons for discounting the opinions of Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos; that the ALJ ignored the opinion of Dr. Perez; that the ALJ failed to consider the opinions of the state agency psychologists and physicians; and that the ALJ improperly rejected the opinions of vocational consultants. At step five, Plaintiff claims that the ALJ improperly relied solely on the grids in determining that jobs existed in sufficient numbers in the national economy that Plaintiff could perform. The Court considers these arguments in turn.

1. Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos

First, Plaintiff claims that the ALJ improperly discounted the opinions of Dr. Larsen, Dr.

1 Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos, each of whom opined that Plaintiff had greater
2 limitations than the limitations that the ALJ ultimately adopted in Plaintiff's RFC. As discussed
3 above, the Ninth Circuit has held that an ALJ may discount the opinions of treating and examining
4 physicians if the ALJ offers "specific and legitimate reasons" for doing so that are supported by
5 substantial evidence. *Cain v. Barnhart*, 74 F. App'x 755, 758 (9th Cir. 2003) (unpublished); *see also Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), *as amended* (Apr. 9, 1996) (describing the
6 standards for evaluating treating, examining, and non-examining physicians). The Court first
7 describes the opinions at issue and how the ALJ addressed these opinions. The Court then
8 evaluates whether the ALJ provided "specific and legitimate" reasons supported by substantial
9 evidence for discounting or partially discounting these opinions. *Id.* In doing so, the Court's role is
10 not to make a *de novo* determination whether Plaintiff is entitled to benefits. Instead, "if evidence
11 exists to support more than one rational interpretation, [the Court] must defer to the
12 Commissioner's decision." *See Rollins v. Massanari*, 261 F.3d 853, 957 (9th Cir. 2001); *Batson v.*
13 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004).

14 Dr. Larsen was a treating physician. As discussed above, on one occasion Dr. Larsen
15 assigned Plaintiff a GAF score of 50, and on another occasion Dr. Larsen assigned Plaintiff a GAF
16 score of 40. In assigning a GAF score of 40, Dr. Larsen also opined that Plaintiff was "incapable
17 of the most basic full-time entry-level position" and that Plaintiff was "permanently and totally
18 disabled." AR 33. Similarly, as discussed above, Dr. Diebel found that Plaintiff had significant
19 limitations and could not meet competitive standards in several areas.

20 The ALJ gave Dr. Larsen's GAF scores, along with all GAF scores of 50 or below, little
21 weight because these GAF scores "suggest[ed] greater functional limitations than supported by the
22 record, including the objective medical evidence discussed above, the [Plaintiff's] longitudinal
23 treatment history, and her activities of daily living." AR 32. The ALJ also noted that "GAF scores
24 in general do not address an individual's abilities on a function-by-function basis . . ." *Id.*

25 In total, the record shows that three medical professionals offered GAF scores. Dr.
26

1 Marinos assigned a GAF score of 51–60, Dr. Perez assigned a GAF score of 50, and Dr. Larsen
2 assigned a GAF score of 50, which Dr. Larsen later revised to 40. As discussed above, a GAF
3 score of 51–60 reflects “moderate difficulty,” a score of 41–50 reflects “serious impairment in
4 social, occupational, or school functioning,” and a score of 31–40 reflects “major impairment in
5 several areas.” Thus, the ALJ was faced with conflicting GAF scores, which indicated anywhere
6 from moderate difficulty to major impairment. In giving little weight to GAF scores of 50 and
7 below, the ALJ resolved a conflict in the medical evidence and, as discussed below, substantial
8 evidence in the record adequately supported this conclusion. Although other evidence in the record
9 might justify a different determination than the one the ALJ made, the ALJ's determination
10 satisfies the applicable legal standards. *See Rollins*, 261 F.3d at 957; *Batson*, 359 F.3d at 1193
11 (“[I]f evidence exists to support more than one rational interpretation, we must defer to the
12 Commissioner's decision.”).¹

13 Similarly, the ALJ rejected Dr. Larsen's conclusions of permanent and total disability on
14 the grounds that Dr. Larsen's opinion on this issue was inconsistent with the record evidence and
15 that Dr. Larsen's opinion was based primarily on Plaintiff's own alleged symptoms rather than on
16 objective medical evidence. AR 33. Dr. Larsen also noted that testing indicated some symptom
17 exaggeration. Ex. 19F at 1007.

18 As to Dr. Diebel, who completed a check-box form finding that Plaintiff could not meet
19 competitive standards in most areas, the ALJ stated that “[a]lthough Dr. Diebel had a treatment
20 relationship with [Plaintiff], his opinion is inconsistent with the evidence of record, including
21 objective medical findings, [Plaintiff's] longitudinal treatment history, and her activities of daily
22

23 ¹ Similarly, the record contains three IQ evaluations, one of which indicated an IQ of 79, one of
24 which indicated an IQ of 78, and one of which indicated an IQ of 66. Ex. 22F at 1074; Ex. 19F at
25 1025; Ex. 20F at 1038–39. However, the doctor who administered the test indicating an IQ of 66
26 specifically stated that this test likely underestimated Plaintiff's intelligence. Ex. 19F at 1025.
27 Moreover, another test indicated symptom exaggeration. *Id.* This doctor also described Plaintiff as
28 “an individual who may be exaggerating the extent of her difficulties.” *Id.* at 1026. Here again, the
evidence regarding Plaintiff's cognitive abilities was somewhat conflicted, and the ALJ's
resolution of the conflict was reasonable.

1 living. For example, there is no objective evidence that claimant would not even be able to meet
2 competitive standards of asking simple questions or request[ing] assistance.” AR 38. The ALJ also
3 found that Dr. Diebel’s opinion was internally inconsistent, because “[d]espite finding so many
4 significant limitations – even with respect to the most basic tasks – Dr. Diebel concluded that the
5 claimant can manage her own funds (which must invariably require significant abilities in
6 concentration, persistence or pace).” *Id.*

7 Dr. Lynn was a treating neurologist. In one-page Work Status Reports for Plaintiff’s
8 Worker’s Compensation case, Dr. Lynn opined that Plaintiff could perform only four hours of
9 sedentary work per day with no driving. Exs. 16F, at 936, 29F at 1164. The ALJ discounted Dr.
10 Lynn’s opinion on this issue and found as follows:

11 These restrictions, especially limiting [Plaintiff] to less than an 8-hour workday,
12 are inconsistent with the evidence discussed above, including objective medical
13 findings, [Plaintiff’s] longitudinal treatment history, and her activities of daily
14 living. For example, as discussed above, [Plaintiff] admitted to being independent
15 in activities of daily living; she can use public transportation; she exhibited a
16 normal gait on numerous occasions and does not consistently use an assistive
17 device; and she can manage her own funds. This evidence points to more
18 significant functional abilities than alleged by [Plaintiff] and suggested by the
19 above opinions.

20 AR. 39. The ALJ also noted that a rehabilitative driver consultant had recommended 20 hours of
21 driver training lessons and that “neither the State agency psychological consultants, nor the
22 medical expert who testified at the hearing, found any limitations with respect to [Plaintiff’s]
23 driving.” *Id.*

24 The ALJ accepted most of the conclusions of examining psychologists Dr. Munday and
25 Dr. Marinos, which are discussed above. Specifically, the ALJ agreed that Plaintiff has some
26 limitations and cannot return to her past work. AR 32, 34. However, the ALJ disagreed with Dr.
27 Munday’s and Dr. Marinos’s conclusions that Plaintiff “may need to work in a slower-paced
28 environment.” Def. MSJ at 19. With respect to Dr. Marinos’s opinion on this issue, the ALJ stated
the following: “Dr. Marinos’ opinion about [Plaintiff’s] ability to maintain employment in a fast-
paced environment is not entirely consistent with [the] record. Instead, the undersigned finds that

1 by limiting [Plaintiff] to essentially very simple and routine work, [Plaintiff] would be able to
2 learn her job and perform it on a sustained basis. As such, the undersigned gives partial weight to
3 Dr. Marinos' opinion." AR 34.

4 Similarly, with regard to Dr. Munday's opinion on this issue, the ALJ stated the following:
5 "Insofar as Dr. Munday suggests that the claimant would need to work in a slow-paced
6 environment in addition to the limitation to simple, routine, 1- to 2-step job tasks, his opinion is
7 not consistent with the record. As such, the undersigned gives his opinion partial weight." AR 32;
8 *see Schuff v. Astrue*, 327 F. App'x 756, 758 (9th Cir. 2009) ("The ALJ gave specific and
9 legitimate reasons supported by substantial evidence for rejecting the opinions of treating
10 physicians . . . because their records did not support their opinions and were inconsistent with
11 substantial evidence in the record.").

12 The Court next considers whether the ALJ's reasons for discounting or partially
13 discounting these opinions were specific and legitimate and supported by substantial evidence in
14 the record. At the outset, the Court notes that many of the opinions to which Plaintiff refers are
15 opinions on the ultimate issue of whether Plaintiff was disabled or was capable of working. To the
16 extent that Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos gave opinions about the ultimate
17 issue of Plaintiff's ability to work and the "nature and severity of [Plaintiff's] impairments," these
18 opinions "[we]re not medical opinions, . . . but [we]re, instead, opinions on issues reserved to the
19 Commissioner because they are administrative findings that are dispositive of a case; i.e., that
20 would direct the determination or decision of disability." 20 C.F.R. § 404.1527(d); *see also Sager*
21 *v. Colvin*, 622 F. App'x 629 (9th Cir. 2015) (unpublished) (holding that whether a claimant is
22 "unable to work" is not a matter of medical opinion but "rather a question reserved to the ALJ").

23 For the reasons discussed below, the Court finds that ALJ did not err in discounting or
24 partly discounting Dr. Larsen's and Dr. Diebel's opinion that Plaintiff was totally disabled, Dr.
25 Lynn's opinion that Plaintiff should be limited to 4 hours of sedentary work per day, and Dr.
26 Munday's and Dr. Marinos's opinions that Plaintiff should be limited to a slow-paced

1 environment. To the contrary, there was substantial evidence in the record supporting the ALJ's
2 finding of a less limited RFC. Particularly, the ALJ pointed to Plaintiff's activities of daily living,
3 the objective medical evidence, Plaintiff's conservative treatment history, and the opinions of
4 other medical sources.

5 **a. Activities of Daily Living**

6 Perhaps the most important evidence contradicting opinions of a more limited RFC is
7 evidence regarding Plaintiff's activities of daily living. *Cf. Molina v. Astrue*, 674 F.3d 1104,
8 1112–13 (9th Cir. 2012) (holding that an ALJ may consider whether the Plaintiff “reports
9 participation in everyday activities indicating capacities that are transferable to a work setting.”);
10 *Schuff*, 327 F. App'x at 758 (“The ALJ also gave specific, clear, and convincing reasons supported
11 by substantial evidence for finding Schuff was not entirely reliable because her statements were
12 inconsistent with other evidence in the record and her daily activities.”).

13 The ALJ found that Plaintiff was mostly independent in her daily living. For example,
14 Plaintiff used public transportation often, was never prescribed an assistive device, did not
15 consistently use an assistive device, and had recently traveled out of state for a wedding. AR 39.
16 Plaintiff also occasionally watered the lawn, did laundry, performed light household chores, took
17 out the garbage, walked to and from a neighborhood store, took a trip out of state, went to church,
18 occasionally went out for dinner, communicated regularly with family and others, and used a
19 computer for email and Facebook. Exs. 10E, 11F. Additionally, Plaintiff was able to manage her
20 own funds, which required some degree of concentration and mental acuity. Furthermore,
21 December 2011 handwritten treatment notes indicate that Plaintiff entertained 13 people at her
22 home for Christmas, which undermines the finding that Plaintiff lacks the social skills necessary to
23 function in a work environment. Ex. 5F. Plaintiff also has the physical ability to drive, although an
24 evaluator recommended that Plaintiff not drive alone and that Plaintiff take 20 hours of driving
25 lessons to improve her endurance and confidence in driving. *Id.*; *see Molina*, 674 F.3d at 1113
26 (“[T]he ALJ may discredit a claimant's testimony when the claimant reports participation in
27 everyday activities indicating capacities that are transferable to a work setting.”).

1 Plaintiff has also demonstrated an ability to concentrate and focus. For example, during the
2 evaluation with Dr. Perez, Plaintiff worked on psychometric questionnaires for two hours without
3 a break, then after a break, Plaintiff continued to work for another two hours. Ex. 11F.
4 Additionally, Dr. Diebel found that Plaintiff could handle her own finances independently. AR
5 68–69. As the ALJ stated, handling finances “must invariably require significant abilities in
6 concentration, persistence or pace.” AR 38.

7 **b. Objective Medical Evidence**

8 The objective medical evidence also supports the ALJ’s conclusion. For example, the most
9 comprehensive evaluation of Plaintiff’s visual ability demonstrated that although Plaintiff had
10 diminished visual acuity without corrective lenses, Plaintiff had full visual fields in both eyes and
11 that there was no reason to believe that Plaintiff had developed any kind of visual defect. Exs.
12 16F, 13F. Plaintiff also consistently demonstrated a normal gait between 2011 and 2014, *see* Exs.
13 4F, 5F, 6F, 16F, 29F. Additionally, Plaintiff exhibited mostly normal or “mildly weak” strength in
14 her extremities in September 2013 and September 2014. Exs. 27F, 29F. Thus, the objective
15 medical evidence did not support a finding that Plaintiff had serious physical limitations.

16 There was also little objective evidence of serious cognitive impairment. Two MRIs on
17 May 19, 2011; an EMG study from December 19, 2011; and an EEG study from May 29, 2013
18 demonstrated only minor abnormalities. Exs. 7F, 5F, 16F, 15F. Plaintiff often exhibited a normal
19 mood, Exs. 5F at 52; 6F at 30, 46, 76; 7F at 19, 37, 56; a pleasant and cooperative demeanor, Exs.
20 5F at 52; 6F at 46, 76; 16F at 50; clear speech, Exs. 16F at 3; 29F at 3, 10; an intact memory, Ex.
21 7F at 19, 37, 56, 72; normal attention span and concentration, Exs. 16F at 5, 14, 19; Ex. 29F at 3;
22 and consistent alertness and orientation, Exs. 16F at 5, 14, 19; 29F at 3.

23 Instead, as the ALJ pointed out, the diagnoses of cognitive impairment were based largely
24 on Plaintiff’s own reported symptoms. As Dr. Larsen and others pointed out, and as the ALJ
25 found, these self-reported symptoms indicated exaggeration. *See, e.g.*, Ex. 19F at 1026 (statement
26 of Dr. Morgenthaler that Plaintiff’s “differential diagnosis should include somatoform, depressive
27 and anxiety disorders in an individual who may be exaggerating the extent of her difficulties.”).

1 Dr. Larsen concluded that Plaintiff's symptom exaggeration "is probably the result of [Plaintiff]
2 reporting how bleak she feels about her existence and prospects for the future." *Id.* at 1007.
3 However, whatever Plaintiff's motivations were in exaggerating her symptoms, that exaggeration
4 nevertheless casts doubt on opinions relying on these reported symptoms to find substantial
5 cognitive impairment. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) ("An ALJ
6 may reject a treating physician's opinion if it is based 'to a large extent' on a claimant's self-
7 reports that have been properly discounted as incredible.").

8 **c. Conservative Treatment History**

9 Plaintiff's longitudinal treatment history also supports the ALJ's decision to give less
10 weight to the opinions of Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos. As the
11 ALJ stated, "[w]hile the . . . longitudinal treatment history shows ongoing and fairly consistent
12 treatment for numerous symptoms, this treatment has generally been conservative." AR 28.
13 Plaintiff was never hospitalized for her mental problems, but instead medical providers prescribed
14 and recommended medication, therapy, home exercises, and the use of computer brain training
15 games such as Lumosity. Ex. 29F. Despite complaining of falls and dizziness, Plaintiff has never
16 been prescribed the use of an assistive device and has not consistently used an assistive device.
17 Plaintiff has also undergone some vestibular therapy to protect against falls, but there is no
18 evidence that Plaintiff has undergone such therapy after 2012. Exs. 27F p.12, 10F. Plaintiff has
19 also been treated with occipital nerve block and trigger point injections, which are minimally
20 invasive procedures to treat pain. Additionally, Plaintiff has undergone physical therapy, speech
21 and cognitive therapy, and other forms of therapy such as acupuncture. This longitudinal treatment
22 history is relatively conservative and supports the ALJ's conclusion that although Plaintiff has
23 some limitations, Plaintiff's RFC is not as limited as Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr.
24 Munday, and Dr. Marinos opined.

25 **d. Opinions of Other Medical Sources**

26 The opinions of Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos on the

1 issue of Plaintiff's limitations are also inconsistent with the opinions of other medical sources in
2 the record. For example, Dr. Wang, Plaintiff's treating physician, frequently noted that "[t]here is
3 no impairment of insight or judgment." Ex. 7F at 689, 705, 709, 712. Dr. Aquino-Caro and Dr.
4 Brill, the state agency physicians who conducted mental assessments, also found that Plaintiff had
5 only mild or moderate limitations. *See Jacobs v. Colvin*, 2013 WL 4054454, at *4 (W.D. Wash.
6 Aug. 12, 2013) ("The Ninth Circuit and two sister circuits have held that an RFC restriction to
7 simple tasks is not inconsistent with medical recommendations to have moderate limitations in
8 concentration, persistence, and pace.") (citing *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174
9 (9th Cir.2008)). Dr. Aquino-Caro and Dr. Brill concluded that Plaintiff could understand 1-2 step
10 job tasks, avoid workplace hazards, and respond appropriately to social interaction and workplace
11 supervision. AR. 107-09, 128-29. Dr. Wong and Dr. Greene, the state agency physicians who
12 conducted physical assessments, concluded that Plaintiff could lift moderate weights and could sit,
13 stand, or walk for 6 hours in an 8-hour workday. AR. 125-27.

14 Furthermore, Dr. Lynn's opinion regarding Plaintiff's driving ability is contradicted by the
15 opinion of the rehabilitative driver consultant, who drove with Plaintiff for an hour and who has
16 more expertise in the area of driving than Dr. Lynn. Ex. 8F. After driving with Plaintiff, the
17 rehabilitative driver consultant concluded that Plaintiff had "the beginning skills to drive" and
18 recommended 20 hours of driver training lessons to "help [Plaintiff] overcome her safety
19 concerns, increase her driving endurance and instill feelings of wellness and confidence while
driving." Ex. 8F at 731.

20 Finally, after evaluating the record evidence, the medical expert Dr. Jonas testified at the
21 December 17, 2014 hearing that "there are no objective findings really at all" justifying Plaintiff's
22 claimed limitations in the record, and that from the record evidence, it appeared that Plaintiff "has
23 no restrictions at all." AR 59, 63. Plaintiff objects to the use of Dr. Jonas's testimony. Specifically,
24 Plaintiff claims that "other courts have found it improper for the ALJ to give [Dr. Jonas's] opinion
25 great weight while rejecting the opinions of treating medical sources." ECF No. 18, at 15. Plaintiff
26 also claims that Dr. Jonas's assertion that there were "no objective findings" to support a finding
27

1 of disability is, “[i]n light of the numerous findings reported even by the ALJ herself, . . . simply
2 incomprehensible.” *Id.* However, as even Plaintiff appears to acknowledge, the ALJ did not “give
3 great weight” to Dr. Jonas’s opinion or accept Dr. Jonas’s opinion in full. To the contrary, the ALJ
4 stated that “to the extent Dr. Jonas found that [Plaintiff] does not have significant limitations, his
5 opinion is inconsistent with [the] record. As such, the undersigned gives his opinion partial
6 weight.” AR 37–38. Thus, even if Plaintiff is correct that Dr. Jonas’s opinion is not entitled to
7 great weight, this does not undermine the ALJ’s decision, which gave Dr. Jonas’s opinion only
8 partial weight and specifically discredited Dr. Jonas’s opinion that Plaintiff had no significant
9 limitations.

10 **e. Summary**

11 In short, the ALJ was faced with conflicting evidence regarding Plaintiff’s physical and
12 cognitive limitations. The ALJ carefully weighed this evidence and offered specific and legitimate
13 reasons for her conclusions. The ALJ did not simply entirely discount the opinions of Dr. Larsen,
14 Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos. For example, the ALJ stated that Dr.
15 Munday’s opinion was “generally consistent with the evidence of record.” AR 32. The ALJ also
16 stated that many of Dr. Marinos’s conclusions, including a GAF score of 51–60, were “generally
17 consistent with th[e] evidence.” AR 32. However, after comprehensively considering the evidence
18 discussed above, including Plaintiff’s daily activities, the lack of objective medical evidence,
19 Plaintiff’s exaggeration of her symptoms, and Plaintiff’s treatment history, the ALJ found that
20 some limitations in these medical opinions were not justified.

21 The reasons discussed above that the ALJ gave for discounting or partially discounting the
22 opinions of Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos constitute specific
23 and legitimate reasons supported by substantial evidence. The Ninth Circuit has held that the ALJ
24 may discredit physicians’ opinions that are “conclusory, brief, and unsupported by the record as a
25 whole, or by objective medical findings.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190,
26 1195 (9th Cir. 2004) (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). The

1 Ninth Circuit has also held that “[a]n ALJ may reject a treating physician’s opinion if it is based
2 ‘to a large extent’ on a claimant’s self-reports that have been properly discounted as incredible.”
3 *Tommasetti*, 533 F.3d at 1041. The reports of several medical sources, including Dr. Larsen, were
4 based primarily on Plaintiff’s self-reported symptoms, which the ALJ found not entirely credible
5 because they were inconsistent with Plaintiff’s daily activities and other evidence in the record.
6 *See Higgins v. Berryhill*, 2017 WL 2875373, at *1 (9th Cir. July 6, 2017) (holding that evidence
7 regarding symptom exaggeration, conservative treatment, inconsistency with objective medical
8 evidence, and daily activities was sufficient to justify giving less weight to testimony describing
9 debilitating symptoms).

10 Additionally, the Ninth Circuit has held that an ALJ may properly “afford lesser weight” to
11 a medical opinion if that opinion is “internally inconsistent,” as with Dr. Diebel. *Burdon v. Colvin*,
12 650 F. App’x 535, 537 (9th Cir. 2016); *see also Richardson v. Comm’r of Soc. Sec.*, 588 F. App’x
13 531, 533 (9th Cir. 2014) (“[T]he ALJ properly found that Dr. Hawkins’s report was internally
14 inconsistent and that his conclusions regarding Richardson’s mental functioning were not
15 compatible with Richardson’s ability to hold a paying job for a number of years.”). Additionally,
16 the Ninth Circuit has held that an ALJ need not give significant weight to check-box forms, such
17 as Dr. Diebel’s report, that offer little explanation for their conclusions. *See Molina*, 674 F.3d at
18 1111 (holding that ALJs are permitted to reject “check-off reports that [do] not contain any
19 explanation of the bases of their conclusions.”); *see also Batson*, 359 F.3d at 1195 (finding that
20 ALJ properly disregarded conclusory evidence in the form of a checklist that lacked supportive
21 objective evidence and was contradicted in other parts of the record).

22 In light of the evidence in the record, the ALJ’s conclusions that parts of the opinions of
23 Dr. Larsen, Dr. Diebel, Dr. Lynn, Dr. Munday, and Dr. Marinos were inconsistent with the record
24 as a whole are specific and legitimate reasons supported by substantial evidence. *Combs v. Astrue*,
25 387 F. App’x 706, 708 (9th Cir. 2010) (unpublished) (holding that the ALJ permissibly rejected
26 the medical opinion of a treating physician which was unsupported by the record as a whole).

“Substantial evidence must be more than a scintilla, but it need not amount to a preponderance.” *Rollins*, 261 F.3d at 957. In the instant case, the ALJ relied on much more than “scintilla” of evidence. Although Plaintiff reported serious cognitive limitations and these medical providers endorsed many of those limitations in their opinions, these opinions are contradicted by Plaintiff’s daily activities, the lack of objective medical findings, Plaintiff’s exaggeration of symptoms, and Plaintiff’s conservative treatment history. While other evidence in the record might justify a different determination than the one the ALJ made, the ALJ’s determination satisfies the applicable legal standards. Thus, it is not the role of the Court to second-guess it. *See Rollins*, 261 F.3d at 957; *Batson*, 359 F.3d at 1193 (“[I]f evidence exists to support more than one rational interpretation, we must defer to the Commissioner’s decision.”).

2. Dr. Perez

Plaintiff also argues that the ALJ “fail[ed] to address and evaluate the functional limitations described by Dr. Perez,” an examining psychologist, and that this failure alone “requires remand for further evaluation.” Def. MSJ at 20. The ALJ discussed Dr. Perez’s evaluation of Plaintiff and noted that during the evaluation, Plaintiff continued to complain of headaches, neck and shoulder pain, vestibular difficulties, cognitive impairment, and depression and anxiety. AR 32. During the evaluation, Plaintiff walked with a normal gait, exhibited no pain behavior, and sat comfortably through a long interview. The ALJ stated that “[t]his demonstrates, amongst other things, that [Plaintiff’s] pain and fatigue, are not as severe as she has alleged.” AR 33. The ALJ also noted Dr. Perez’s diagnosis and that Dr. Perez assigned Plaintiff a GAF score of 50 based on his evaluation.

Plaintiff is incorrect in stating that the ALJ ignored Dr. Perez's evaluation and opinion. As discussed above, the ALJ considered Plaintiff's behavior during Dr. Perez's evaluation and found that this behavior indicated that Plaintiff's pain and fatigue were not as severe as alleged. Additionally, as to Dr. Perez's assignment of a GAF score of 50, the ALJ stated that "the undersigned gives . . . GAF scores in the record of 50 and below, little weight." AR 32. The ALJ

1 gave such GAF scores little weight because a GAF score of 50 or below “suggests greater
2 functional limitations than supported by the record, including the objective medical evidence . . . ,
3 [Plaintiff’s] longitudinal treatment history, and her activities of daily living. Moreover, GAF
4 scores in general do not address an individual’s abilities on a function-by-function basis” AR
5 32.

6 These constitute “specific and legitimate reasons” for discounting Dr. Perez’s opinion that
7 Plaintiff’s limitations were serious enough to justify a GAF score of 50. *Bray*, 554 F.3d at 1228.
8 As discussed above, the Ninth Circuit has held that an ALJ may discredit a treating physician’s
9 opinion if it is “unsupported by the record as a whole, or by objective medical findings.” *Batson*,
10 359 F.3d at 1195. Additionally, as discussed above, there was substantial evidence in the record
11 that Plaintiff’s limitations were not extensive enough to justify a GAF score of 50. For example,
12 Plaintiff’s activities of daily living suggested that Plaintiff was able to move, concentrate, and
13 function independently. The fact that Plaintiff’s medical treatment was relatively conservative also
14 supported the conclusion that Plaintiff’s limitations were not as extensive as Plaintiff claimed.
15 Additionally, as the ALJ noted, Plaintiff’s behavior at Dr. Perez’s evaluation also indicated that
16 Plaintiff’s “pain and fatigue, are not as severe as she has alleged.” AR 33.

17 Plaintiff specifically objects that the ALJ failed to address the fact that Dr. Perez’s notes
18 mentioned that Plaintiff had moderately severe vestibular difficulties that “independently cause
19 significant functional limitations,” “significant cognitive impairment,” “significant limitation in
20 her ability to carry out financial activity, and difficulty in crowds and social situations.” Def. MSJ
21 at 19, AR 859. However, as Defendant points out, these portions of Dr. Perez’s notes mostly
22 summarized treatments that Plaintiff previously received, and Dr. Perez recorded Plaintiff’s
23 reported symptoms. *See* AR 852 (“The patient describes the ongoing presence of cognitive
24 impairment and indicates that this is a matter of significant concern.”). For example, Dr. Perez
25 noted that “[v]estibular difficulties . . . have been present since [Plaintiff’s] industrial accident. . . .
26 As of this date, the patient continues to report about 30 seconds of subjective dizziness upon
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1 postural alteration.” AR 859. Additionally, Dr. Perez’s description of Plaintiff’s ability to carry out
2 financial activity and social difficulties fall under the heading “Current Complaints” and are part
3 of Plaintiff’s description of her symptoms. AR 851–52. With regard to cognitive impairment, Dr.
4 Perez specifically stated, “I did not perform formal neurocognitive testing. Discussion of cognitive
5 status is deferred to Dr. Claude Munday.” AR 857.

6 In short, with respect to these issues, Dr. Perez’s report only repeated symptoms and
7 limitations described by other medical professionals and Plaintiff herself rather than reflecting Dr.
8 Perez’s own objective findings. Therefore, it is sufficient that the ALJ addressed these alleged
9 limitations when discussing other medical opinions and Plaintiff’s own allegations. The ALJ was
10 not required to specifically address these limitations again in discussing Dr. Perez’s report. *See*
11 *Sager v. Colvin*, 622 F. App’x 629, 629 (9th Cir. 2015) (unpublished) (“The ALJ was not required
12 to discuss every medical finding in the records of [two doctors]. Nor was the ALJ required to
13 credit [the plaintiff’s] subjective complaints merely because they were recorded in his physicians’
14 records.”) (internal citations omitted). As discussed above, the ALJ adequately addressed Dr.
15 Munday’s opinion and other opinions noting limitations similar to those recorded by Dr. Perez.
16 Thus, the ALJ was not required to address these same limitations again simply because they were
17 recorded again by Dr. Perez.

18 Furthermore, even if the ALJ erred by failing to specifically address the limitations
19 recorded in Dr. Perez’s report, this error would be harmless. The Ninth Circuit has held that errors
20 in Social Security adjudications are harmless “where it is clear they did not alter the ALJ’s
21 decision” or where “there remains substantial evidence supporting the ALJ’s decision and the
22 error ‘does not negate the validity of the ALJ’s ultimate conclusion.’” *Molina*, 674 F.3d at 1115
23 (quoting *Batson*, 359 F.3d at 1197); *see also* 28 U.S.C. § 2111 (“On the hearing of any appeal or
24 writ of certiorari in any case, the court shall give judgment after an examination of the record
25 without regard to errors or defects which do not affect the substantial rights of the parties.”).
26 Because the ALJ discussed Dr. Perez’s opinion in some detail and because the ALJ discussed the
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1 specific limitations noted by Dr. Perez elsewhere in the written decision, any error in not
2 discussing these limitations specifically with respect to Dr. Perez did not “alter the ALJ’s
3 decision” and does not “negate the validity of the ALJ’s ultimate conclusion.” *Molina*, 674 F.3d at
4 1115.

5 In short, the ALJ offered specific and legitimate reasons for discounting Dr. Perez’s overall
6 conclusion that Plaintiff had a GAF score of 50, indicating “serious symptoms.” AR 859. The ALJ
7 also was not required to specifically address Dr. Perez’s notation of the limitations reported by
8 other medical providers, such as Dr. Munday, and by Plaintiff. Additionally, even if the ALJ erred
9 by not addressing these specific limitations, any such error was harmless. The Court therefore
10 rejects Plaintiff’s argument that the ALJ’s treatment of Dr. Perez’s opinion requires remand.

11 **3. State Agency Psychologists and Physicians**

12 As discussed above, the state agency psychologists, Dr. Aquino-Caro and Dr. Brill, both
13 concluded that Plaintiff had some limitations but that Plaintiff could work an 8-hour work
14 schedule on a sustained basis. Dr. Aquino-Caro and Dr. Brill also both concluded that Plaintiff
15 could respond appropriately to supervision and social interaction in the workplace if social
16 interaction was infrequent and limited to small groups. Dr. Brill also stated that Plaintiff would
17 need a work setting that “does not prioritize rapid task completion.” AR 37. The ALJ gave “great
18 weight” to Dr. Aquino-Caro’s opinion and “partial weight” to Dr. Brill’s opinion. *Id.*

19 Plaintiff argues that the ALJ improperly “fail[ed] to either explicitly reject (and explain her
20 reasons for rejecting) or to adopt the limitations described by the state agency psychologists . . .”
21 Def. MSJ at 20. However, this argument is incorrect on its face. The ALJ rejected the social
22 limitations contained in Dr. Aquino-Caro’s and Dr. Brill’s opinions and adequately explained her
23 reasons for doing so. With respect to Dr. Aquino-Caro, the ALJ stated the following: “[T]he
24 undersigned gives great weight to Dr. Aquino-Caro’s opinion. However, the evidence of record,
25 especially [Plaintiff’s] activities of daily living, show that she does not have significant limits in
26 social functioning. Therefore, there are no restrictions on function in the residual functioning

1 capacity.” AR 36. With respect to Dr. Brill, the ALJ stated the following: “Dr. Brill’s opinion is
2 generally consistent with the evidence of record. However, as discussed in analyzing Dr. Aquino-
3 Caro’s opinion, [Plaintiff] has only mild limitations in social functioning. As discussed in
4 analyzing Dr. Marinos’ opinion, the undersigned also finds that the limitations on rapid task
5 completion are unsupported by the record—especially in light of the significant mental restrictions
6 in the residual functional capacity. Therefore, the undersigned gives partial weight to Dr. Brill’s
7 opinion.” *Id.*

8 Thus, contrary to Plaintiff’s argument, the ALJ did explicitly reject part of Dr. Aquino-
9 Caro’s and Dr. Brill’s conclusions, and the ALJ offered adequate reasons for these decisions.
10 These reasons provide specific and legitimate grounds for the ALJ to reject limitations on social
11 functioning and slow pace. For the reasons discussed above, there is substantial evidence in the
12 record indicating that Plaintiff suffers from only mild social impairment and can accomplish
13 simple tasks even if the pace is not slow. For example, the evidence indicates that Plaintiff
14 entertained 13 people at her home for Christmas. Ex. 5F. Additionally, Plaintiff was consistently
15 polite and cooperative when meeting with doctors and other evaluating professionals. *See, e.g.*,
16 Exs. 5F at 52; 6F at 46, 76; 16F at 50. Indeed, Dr. Aquino-Caro himself concluded that Plaintiff
17 had only mild limitations in social functioning. AR 36.

18 Similarly, Plaintiff also objects to the ALJ’s failure to adopt or explicitly reject the
19 limitations described by Dr. Wong and Dr. Greene, the state agency physicians. However, the ALJ
20 offered the following reasons for giving partial weight to the opinions of Dr. Wong and Dr.
21 Greene:

22 Their opinions in this case are . . . generally consistent with the objective medical
23 evidence, [Plaintiff’s] longitudinal treatment history and her activities of daily
24 living. However, to the extent that they impose limitations beyond those in the
25 residual functional capacity above—for example, regarding [Plaintiff’s] ability to
26 balance, reach overhead, handle objects, and avoid hazards—they are not
27 consistent with that record. For instance, [Plaintiff] has demonstrated that she
28 does not consistently use a cane and exhibited a steady gait, as well as largely
preserved motor strength, on a number of occasions. Therefore, the undersigned
gives these opinions partial weight.

1 AR 37. These reasons constitute specific and legitimate reasons for giving partial weight to the
2 opinions of Dr. Wong and Dr. Greene. As discussed above, there is substantial evidence supporting
3 the ALJ's statement that Plaintiff did not consistently use a cane, that Plaintiff exhibited a steady
4 gait, and that Plaintiff had largely preserved motor strength. *See* Exs. 4F, 5F, 6F, 16F, 27F, 29F.

5 In short, contrary to Plaintiff's argument, the ALJ did not simply ignore the limitations
6 discussed by the state agency psychologists and physicians. Instead, the ALJ considered these
7 limitations and gave specific and legitimate reasons for rejecting these limitations. Such reasons
8 were supported by substantial evidence in the record. While other evidence in the record might
9 justify a different determination than the one the ALJ made, the ALJ's determination satisfies the
10 applicable legal standards. Thus, it is not the role of the Court to second-guess it. *See Batson*, 359
11 F.3d at 1193 ("[I]f evidence exists to support more than one rational interpretation, we must defer
12 to the Commissioner's decision."). Therefore, the Court rejects Plaintiff's argument that the ALJ
13 failed to consider the limitations discussed in the opinions of state agency psychologists and
14 physicians.

15 **4. Vocational Opinions in the Record**

16 Plaintiff also briefly argues that the ALJ improperly rejected the opinions of two
17 vocational analysts, Mr. Simon and Mr. Linvill, who found greater work limitations than the ALJ,
18 as well as one pain management specialist, Dr. Miner, who deferred to Mr. Simon's conclusion.
19 Plaintiff claims briefly that "[t]he ALJ's rejection of the combined medical and vocational
20 opinions of record was as conclusory and flawed as her rejection of the many other medical
21 opinions of record." Def. MSJ at 22.

22 In addressing these opinions, the ALJ noted that these vocational consultants came to
23 conclusions similar to Dr. Larsen's conclusions. Therefore, the ALJ stated that "[f]or the reasons
24 discussed above (for example, in analyzing Dr. Larsen's December 30, 2013 opinion), the
25 undersigned gives little weight to Mr. Simon's and Mr. Linvill's opinions." AR 38. As discussed
26 above, the ALJ gave specific and legitimate reasons for discounting Dr. Larsen's opinion that

1 Plaintiff was totally disabled, and these reasons were supported by substantial evidence in the
2 record. *See supra* Part III.D.1. In other words, the ALJ's rejection of other challenged medical
3 opinions was proper, and therefore the Court rejects Plaintiff's argument that "[t]he ALJ's
4 rejection of the combined medical and vocational opinions of record was as conclusory and flawed
5 as her rejection of the many other medical opinions of record." Def. MSJ at 22.

6 Therefore, the Court finds that the ALJ offered specific and legitimate reasons supported
7 by substantial evidence for rejecting the opinions of the vocational consultants.

8 **5. Step Five**

9 Finally, Plaintiff argues that the ALJ erred at step five by referring only to the medical-
10 vocational guidelines, also known as the grids, in determining that there were significant numbers
11 of jobs in the national economy that Plaintiff could perform.

12 At step five, the Commissioner bears the burden "to show that the claimant can perform
13 some other work that exists in 'significant numbers' in the national economy, taking into
14 consideration the claimant's [RFC], age, education, and work experience." *Tackett v. Apfel*, 180
15 F.3d 1094, 1100 (9th Cir.1999) (quoting 20 C.F.R. § 404.1560(b)(3)). The Commissioner can
16 meet his burden in two ways: "(1) by the testimony of a vocational expert, or (2) by reference to
17 the [grids]." *Id.* at 1099. "[T]he grids are not designed to establish automatically the existence of
18 jobs for persons with both severe exertional and non-exertional impairments." *Lounsbury v.*
19 *Barnhart*, 468 F.3d 1111, 1115 (9th Cir. 2006).

20 "Where a claimant suffers only exertional limitations, the ALJ must consult the grids." *Id.*
21 When use of the grids is mandatory, the ALJ may not come to a different finding than that directed
22 by the grids. *Id.* However, if a claimant's limitations are completely non-exertional, the grids are
23 not applicable and the ALJ must rely exclusively on other evidence in determining whether there
24 are jobs in the national economy that the claimant can perform. *Id.* If a claimant suffers from both
25 sufficiently severe exertional and nonexertional limitations, then the ALJ must look at the grids
26 first and rely on other evidence to examine separately the non-exertional limitations if the grids
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1 would not otherwise classify the claimant as disabled. *Id.* at 1115-16.

2 Exertional limitations are defined as those that affect a claimant's "ability to meet the
3 strength demands of a job." 20 C.F.R. § 404.1569a. The grids categorize exertional limitations
4 into the categories of "sedentary work," "light work," and "medium work." *Id.* Each of these
5 designations is based on the ability of the claimant to lift and carry items of varying weight and
6 varying frequency throughout the day. *Id.* For example, "sedentary work" involves carrying "no
7 more than 10 pounds at a time and occasionally lifting or carrying articles like docket files,
8 ledgers, and small tools." *Id.* Non-exertional limitations are those that do not directly affect
9 strength, but instead affect a claimant's ability to meet other demands of a job. *Id.* "Examples of
10 non-exertional limitations are pain, postural limitations, or environmental limitations." *Tackett,*
11 180 F.3d at 1102.

12 "The ALJ should first determine if a claimant's non-exertional limitations significantly
13 limit the range of work permitted by his exertional limitations." *Id.* If the limitations imposed by a
14 claimant's non-exertional limitations do not significantly limit the range of work the claimant can
15 do, the testimony of a vocational expert is not required. *See, e.g., Hoopai v. Astrue,* 499 F.3d 1071,
16 1076-77 (9th Cir. 2007) (holding ALJ's determination that a claimant's depression was not a
17 sufficiently severe non-exertional limitation to require the testimony of a vocational expert was
18 appropriate because claimant's depression did not significantly limit his abilities beyond his
19 exertional limitations); *Landa v. Astrue*, 283 F. App'x 556, 558 (9th Cir. 2008) (holding ALJ's
20 determination that a claimant's depression was not a sufficiently severe non-exertional limitation
21 to require the testimony of a vocational expert was appropriate because claimant's depression did
22 not result in more than mild or moderate limitation to his ability to work). Thus, "the fact that a
23 nonexertional limitation is alleged does not automatically preclude application of the grids."
24 *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573 (9th Cir. 1988).

25 The non-exertional limitations that the ALJ incorporated into the RFC are as follows: "The
26 claimant can only occasionally stoop, crouch, kneel, and balance. Furthermore, the claimant can
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1 understand and remember work locations and procedures of a simple, routine nature involving 1-
2 to 2- step job tasks and instructions.” AR 24. Thus, the question at step five was whether these
3 non-exertional limitations were “sufficiently severe” as to preclude use of the grids alone. *Hoopai*,
4 499 F.3d at 1076.

5 In the instant case, the ALJ found that Plaintiff’s non-exertional limitations did not
6 significantly limit the range of work that Plaintiff can perform. If this finding was appropriate,
7 then the ALJ justifiably relied only on the grids in making the step five determination.

8 The Court finds that the ALJ adequately explained why each of Plaintiff’s non-exertional
9 limitations did not significantly impact Plaintiff’s occupational base. First, the ALJ found that
10 Plaintiff could only occasionally stop, crouch, kneel, and balance. The ALJ noted that under Social
11 Security Ruling 85-15, “light work does not require more than occasional stooping and bending
12 and does not require any crouching.” AR 41; *see* Social Security Ruling 85-15 (“If a person can
13 stoop occasionally (from very little up to one-third of the time) in order to lift objects, the
14 sedentary and light occupational base is virtually intact. . . . This is also true for crouching”).
15 Thus, the ALJ concluded that this limitation did not significantly impact Plaintiff’s occupational
16 base. As to the limitation that Plaintiff should only occasionally balance, the ALJ noted that under
17 Social Security Ruling 85-15, balancing is “not significant at any exertional level.” AR 41.
18 Finally, the ALJ noted that with respect to Plaintiff’s mental limitations, the ALJ noted that these
19 limitations do not significantly impact Plaintiff’s ability to perform unskilled work, which requires
20 “the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to
21 respond appropriately to supervision, coworkers, and usual work situations; and to deal with
22 changes in a routine work setting. These jobs ordinarily involve dealing primarily with objects,
23 rather than with data or people.” *Id.* Thus, the ALJ concluded that Plaintiff’s “mental limitations
24 have little or no effect on the occupational base of unskilled light work.” *Id.*

25 Plaintiff claims that the ALJ’s decision was improper because it did not address all of
26 Plaintiff’s non-exertional limitations “in combination.” AR 41. Specifically, Plaintiff claims that
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1 the ALJ relied on Social Security Rulings, particularly Social Security Ruling 85-15, that only
2 addressed particular limitations in isolation and did not address Plaintiff's unique combination of
3 limitations. The Court agrees that the ALJ could have been more careful to emphasize that Social
4 Security Ruling 85-15 did not specifically address Plaintiff's particular set of non-exertional
5 limitations. *See Social Security Ruling 85-15* ("Where a person has some limitation in climbing
6 and balancing and it is the only limitation, it would not ordinarily have a significant impact on the
7 broad world of work."). However, in context it is clear that the ALJ considered Plaintiff's non-
8 exertional limitations collectively, and not simply one-by one. For example, the ALJ specifically
9 stated that "the additional *limitations* have little or no effect on the occupational base of unskilled
10 light work." AR 41 (emphasis added). The ALJ also noted that "the light unskilled job base is only
11 minimally affected by [Plaintiff's] non-exertional *limitations*." *Id.* (emphasis added). Both of these
12 statements indicate that the ALJ considered the collective impact of all of Plaintiff's non-
13 exertional limitations. The fact that the ALJ cited Social Security Ruling 85-15 in discussing
14 particular examples of Plaintiff's specific limitations does not undermine this conclusion.

15 Thus, the ALJ adequately justified her determination that Plaintiff's non-exertional
16 limitations "have little or no effect on the occupational base of unskilled light work." *Id.* For that
17 reason, the ALJ was not required to consider the findings of a Vocational Expert and was justified
18 in relying on the grids alone.

19 Nevertheless, even if the ALJ erred in failing to address the findings of the Vocational
20 Expert in her decision, this error was harmless. As discussed above, the Ninth Circuit has held that
21 errors in Social Security adjudications are harmless "where it is clear they did not alter the ALJ's
22 decision" or where "there remains substantial evidence supporting the ALJ's decision and the
23 error 'does not negate the validity of the ALJ's ultimate conclusion.'" *Molina*, 674 F.3d at 1115
24 (9th Cir. 2012) (quoting *Batson*, 359 F.3d at 1197); *see also* 28 U.S.C. § 2111 ("On the hearing of
25 any appeal or writ of certiorari in any case, the court shall give judgment after an examination of
26 the record without regard to errors or defects which do not affect the substantial rights of the

1 parties.”).

2 At the hearing in the instant case, a Vocational Expert testified in response to hypothetical
3 questions posed by the ALJ. Specifically, the ALJ discussed a hypothetical individual who had
4 essentially the same limitations that the ALJ found could credibly be attributed to Plaintiff. *See*
5 AR 85 (mentioning, among other symptoms, memory problems, dizziness depression, fatigue,
6 speech problems, and balancing problems). The Vocational Expert testified that this hypothetical
7 individual could not perform Plaintiff’s past work, but that this hypothetical individual could
8 perform several other fairly common jobs, including counter clerk (22,000 in state of California);
9 retail marker (36,000 in state of California), and stock checker (24,000 in state of California). AR
10 86.

11 Although the ALJ did not rely on the Vocational Expert’s testimony in the ALJ’s written
12 decision, it is clear from the Vocational Expert’s testimony that even if the ALJ had done so, the
13 ALJ would have come to the same conclusion. The ALJ incorporated all of Plaintiff’s non-
14 exertional limitations in the hypothetical questions the ALJ posed to the Vocational Expert, and
15 the Vocational Expert identified three jobs existing in substantial numbers that such an individual
16 could perform. As discussed above, these jobs included counter clerk, retail marker, and stock
17 checker. Thus, even if Plaintiff is correct that the ALJ should have considered the ALJ’s testimony
18 in addition to the grids, “it is clear” that the ALJ’s reliance on the grids “did not alter the ALJ’s
19 decision” and “there remains substantial evidence supporting the ALJ’s decision” *Molina*,
20 674 F.3d at 1115. Thus, any error in this respect was harmless. *See Draper v. Colvin*, 2014 WL
21 3969917, at *8 (E.D. Cal. Aug. 13, 2014) (“Even if the Court were to find that a restriction to
22 simple, repetitive tasks is not fully consistent with the ability to perform unskilled work, the record
23 still contains substantial evidence that Plaintiff retains the ability to perform work which exists in
24 significant numbers in the national economy.”) (internal quotation marks omitted).

25 **IV. CONCLUSION**

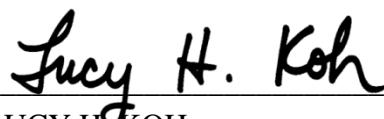
26 In summary, the ALJ’s decision that Plaintiff is not disabled under the Social Security Act

1 is supported by substantial evidence in the record. Accordingly, Plaintiff's motion for summary
2 judgment is DENIED, and Defendant's motion for summary judgment is GRANTED. The Clerk
3 shall close the file.

4 **IT IS SO ORDERED.**

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6 Dated: July 12, 2017

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8 LUCY H. KOH
9 United States District Judge

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